

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions

of the United States Court of Appeals for
the Federal Circuit and the United
States Court of International Trade

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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

The abstracts, rulings, and notices which are issued weekly by the U.S. Customs Service are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Logistics Management Division, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

U.S. Customs Service

Treasury Decision

(T.D. 83-36)

Bonds

Approval and discontinuance of consolidated aircraft bonds (air carrier blanket bonds), Customs Form 7605

The following consolidated aircraft bonds have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by the figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: February 2, 1983.

Name of principal and surety	Date term commences	Date of approval	Filed with district director/area director/amount
Air Nauru, 841 Bishop St., Suite 506, Honolulu, HI; Industrial Indemnity Co. The foregoing principal has not been designated as a carrier of bonded merchandise.	Dec. 10, 1982	Dec. 14, 1982	Honolulu, HI \$100,000
Singapore Airlines, Ltd., San Francisco International Airlines, San Francisco, CA; St. Paul Fire & Marine Ins. Co. (PB 6/15/80) D 3/30/82 ¹	Mar. 30, 1982	May 18, 1982	San Francisco, CA \$100,000
The foregoing principal has been designated as a carrier of bonded merchandise.			

¹Surety is The Continental Ins. Co.

BON-3-01

MARILYN G. MORRISON,
Director,
Carriers, Drawback and Bonds Division.

(T.D. 83-37)

CUSTOMS APPROVED PUBLIC GAUGER

Approval of public gauger performing gauging under standards and procedures required by Customs

Notice is hereby given pursuant to the provisions of section 151.43 of the Customs Regulations (19 CFR 151.43) that the application of Chem Coast, Inc., 1609 First Street, Galena Park, Texas 77547, to gauge imported petroleum and petroleum products in all Customs districts in accordance with the provisions of section 151.43, Subpart C, of the Customs Regulations is approved.

Dated: February 7, 1983.

A. PIAZZA

(For Donald W. Lewis, Director,
Entry Procedures and Penalties Division).

[Published in the Federal Register, February 10, 1983 (48 FR 6234)]

(T.D. 83-38)

Correction of a Customs Finding Relating to the Tariff Classification of Certain Imported Printing Mechanisms

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of correction.

SUMMARY: This document gives notice that a previous Customs finding of an established and uniform practice of classifying certain printing mechanisms under the provision for office machines, not specially provided for, in item 676.30, Tariff Schedules of the United States (TSUS), was made in error, and that a practice did not, in fact, exist at the time of the finding. Customs now finds that the subject mechanisms are correctly classified under the provision for other parts of office machines, not specially provided for, in item 676.52, TSUS, at a higher rate of duty.

EFFECTIVE DATE: February 14, 1983.

FOR FURTHER INFORMATION CONTACT: James C. Hill, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8181).

SUPPLEMENTARY INFORMATION:

BACKGROUND

In a ruling letter addressed to counsel for the importer of certain printing mechanisms, dated April 26, 1976 (File No. 040922), Customs expressed the opinion that mechanisms to be placed in the same housings with cash registers, calculators, or other data source

collectors such as printers, were classifiable under the provision for other parts of office machines, not specially provided for, in item 676.52, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202).

Subsequently, counsel for the importer submitted summaries of his client's importing experience purporting to show that there was an established and uniform Customs practice of classifying certain models of the printing mechanisms under the provision for office machines, not specially provided for, in item 676.30, TSUS. The column 1 rate of duty for merchandise entered under item 676.30, TSUS, has been, and presently is, less than the column 1 rate of duty for merchandise entered under item 676.52, TSUS. Customs reviewed the information submitted on behalf of the importer and issued a finding on August 18, 1976 (File No. 040922), that there was an established and uniform tariff classification practice with respect to 12 specific models of the printing mechanisms, and authorized pending entries of these articles to be liquidated at the lower rate of duty under item 676.30, TSUS.

However, later review of this matter showed that the import records concerning these articles were not complete, that some of these and other similar printing mechanisms has been entered at the higher rate of duty under item 676.52, TSUS, at several ports of entry, and that the liquidation of entries for this merchandise has been suspended at the time of Customs August 18, 1976 finding pending clarification of the appropriate tariff classification of the printing mechanisms. Consequently, Customs finding was based on insufficient factual information.

CORRECTION

In view of the above, a notice was published in the Federal Register on May 26, 1982 (47 FR 23065), advising the public that Customs finding of August 18, 1976 was erroneous, and that the printing mechanisms were correctly classified under item 676.52, TSUS, at the applicable rate of duty. Pursuant to section 315(d), Tariff Act of 1930, as amended (19 U.S.C. 1315(d)), and section 177.10(c), Customs Regulations (19 CFR 177.10(c)), Customs requested comments on the proposed correction. Comments were requested on or before July 26, 1982. However, none were received.

ACTION

After further review of this matter, Customs proposal to correct its previous finding of an established and uniform practice of classifying the subject printing mechanisms under item 676.30, TSUS, and to classify them under item 676.52, TSUS, is adopted. Accordingly, all merchandise entered, or withdrawn from warehouse for consumption, on or after the effective date of this notice, will be classified under item 676.52, TSUS, at the applicable rate of duty.

DRAFTING INFORMATION

The principal author of this document was Jesse V. Vitello, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: February 7, 1983.

WILLIAM VON RAAB,
Commissioner of Customs.

[Published in the Federal Register, February 14, 1983 (48 FR 6632)]

United States Court of Appeals for the Federal Circuit

BAR ZEL EXPEDITERS, INC., A/C BEN CLEMENTS & SONS, INC.,
APPELLANT v. UNITED STATES, APPELLEE

(Appeal No. 82-29)

(Decided: February 4, 1983)

Joseph S. Kaplan argued for appellant. With him on the brief was *John B. Pellegrini*.

Susan Handler-Menahem argued for appellee. With her on the brief were Assistant Attorney General *J. Paul McGrath*, Director *David M. Cohen*, and Attorney in Charge *Joseph I. Lieberman*.

Before MARKEY, Chief Judge, DAVIS and NICHOLS, Circuit Judges.
MARKEY, Chief Judge.

Bar Zel Expeditors, Inc. (Bar Zel) appeals from the judgment of the United States Court of International Trade (*Bar Zel Expeditors, Inc., A/C Ben Clements & Sons, Inc. v. The United States*, 3 CIT —, Slip Op. 82-25 (1982)) holding that the imported plastic fasteners are properly classifiable as "sew-on fasteners", under item 745.63, Tariff Schedules of the United States (TSUS), and refusing classification as "articles not specially provided for, of rubber or plastics", under item 774.60, TSUS. We affirm.

BACKGROUND

The imported merchandise consists of plastic fasteners, known as Tach-Its, used to attach identification tags to clothing and other textile articles.

In practice, a clip of Tach-Its is loaded into a fastening device or "gun" equipped with a hollow needle. The needle is inserted into the article and the fastener is propelled the length of the needle thereby penetrating the article. When the needle is thereafter withdrawn the fastener remains inserted through the article and is held in place by protrusions at either end of its body.

Customs Service officials classified the merchandise under item 745.63.¹ Bar Zel protested that classification and advanced a claim under item 774.60.²

The Court of International Trade (Edward D. Re, Chief Judge) sustained Customs' classification, concluding that the imported merchandise comes within the common meanings of "clasp" and "sew-on fastener" and that Bar Zel had not established commercial meanings for those terms different from their common meanings.

ISSUE

Whether the Court of International Trade erred in holding the merchandise properly classifiable under item 745.63, TSUS.³

OPINION

Bar Zel says that Tach-Its are neither clasps nor sew-on fasteners because they come within neither the common nor commercial meanings of those terms. We disagree.

I. Common Meaning

A. Clasps

In *United States v. Murphy & Co.*, 13 Ct. Cust. Apps 456, 461, T.D. 41348 (1926) and in *United States v. Clarke & Co.*, 13 Ct. Cust. Apps 462, 465, T.D. 41349 (1926), the Court of Customs Appeals,⁴ discussed the meaning of "clasp" and quoted with approval:

A fastening by which things or the parts of a thing are bound or held together; also, any instrument or bond of connection, as a tendril, the hook that fastens on an eye, a grapping-iron, etc.

Funk & Wagnalls New Standard Dictionary (1913).

Under that definition, a clasp need only serve to hold things or parts of things together, i.e., to fasten. Bar Zel concedes that the imported fasteners perform that function.

Bar Zel says, however, that *Murphy* and *Clarke* should not be looked to for the common meaning of "clasp" because those cases concerned issues of relative specificity between two competing tariff provisions, not common meaning. Alternatively, Bar Zel says

¹ Item 745.63 provides in pertinent part:

Clasps, handbag and similar frames incorporating clasps, and snap fasteners; all the foregoing and parts thereof:

Valued not over 20 cents per dozen pieces or parts:	
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745.63	Sew-on fasteners, and parts thereof	27.5% ad val.
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² Item 774.60 provides in pertinent part:

Articles not specially provided for, of rubber or plastics:

774.60	Other	8.5% ad val.
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³ Both parties alternatively claim that the merchandise is classifiable under item 745.65, TSUS and "clasps". In view of our disposition, we need not reach that issue.

⁴ Binding precedent in this Court, *South Corp. v. United States*, 690F.2d 1368 (1982).

that the definition should be rejected as overly broad because a "clasp" must necessarily include features of releasability and refastenability.

We do not agree that *Murphy* and *Clarke* did not involve a determination of common meaning. As Chief Judge Re correctly found, "the * * * court, in both cases, was required to decide whether the merchandise fell within the provision for 'clasps' ". In so deciding, those courts specifically relied on the recited definition as an expression of common meaning.

Nor do we agree that the quoted definition is overly broad. Though Bar Zel points to sources (e.g., Webster's New International Dictionary of the English Language (2d Ed. 1930)) which include releasability and refastenability as limitations on "clasp", we agree with the trial court that Bar Zel has not thus refuted other sources which omit those limitations.

The trial court's finding of common meaning is moreover amply supported by expert testimony in the record expressing agreement with the *Funk and Wagnalls* definition. That Bar Zel presented contrary testimony is alone no basis for upsetting the trial court's finding.

We conclude, therefore, that the trial court correctly relied on the definition set forth in *Murphy* and *Clarke* in determining that the subject fasteners come within the common meaning of "clasp".

B. Sew-On Fasteners

Bar Zel says the common meaning of "sew-on fasteners" is a device attached with needle and thread to an article and used to open and close the article. It says that which draws the imported fastener through an article is not a needle because it has no eye.

It was undisputed that the imported fasteners are used to attach or fasten materials. The trial court properly limited its inquiry, therefore, to whether the process for affixing the fasteners is a sewing operation. Relying on testimony presented at trial and lexicographic references, the court determined that the process of affixing is sewing and that the fasteners are thus sew-on fasteners. Bar Zel has offered no basis for upsetting that determination.

II. Commercial Meanings

Where a tariff term has acquired a meaning in the trade which differs from its common meaning and which is "definite, uniform and general throughout the United States", *United States v. Schwab & Co.*, 30 CCPA 72, 78, C.A.D. 218 (1942), the commercial meaning prevails unless Congress has expressed a contrary intent. *Cadwalader v. Zeh*, 151 U.S. 171 (1894).

Though Bar Zel says the commercial designations of "clasps" and "sew-on fasteners" differ from their common meanings and that the imported fasteners are not known as "clasps" or "sew-on fasteners" in the trade, we agree with the trial court that Bar Zel has failed to establish commercial designations for those terms which

are "definite, uniform and general throughout the United States". The opinion of Bar Zel's witnesses, that the fasteners are not known as clasps or sew-on fasteners in the garment trade, is not conclusive proof of the required commercial meanings, particularly where, as the trial court observed, much of that testimony is contradictory and basic differences among Bar Zel's own witnesses evidenced absence of a definite, uniform, and general understanding of the terms.

CONCLUSION

Bar Zel having failed to establish error in the trial court's determination that the imported fasteners are included within the common meanings of "clasps" and "sew-on fasteners", and having failed to show error in the trial court's finding that it had not established commercial meanings for those terms which would exclude the imported fasteners, the trial court's judgment upholding the classification under item 745.63, TSU is affirmed.

AFFIRMED

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

Paul P. Rao
Morgan Ford
Frederick Landis

James L. Watson
Bernard Newman
Nils A. Boe

Senior Judges

Samuel M. Rosenstein

Herbert N. Maletz

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 83-8)

AMERICAN MOTORISTS INSURANCE COMPANY, PLAINTIFF *v.* UNITED
STATES, DEFENDANT

Court No. 82-1-00053

Before RE, *Chief Judge*.

Memorandum Opinion and Order on Plaintiff's Motion and Defendant's Cross-Motion for Summary Judgment

Although entry documents were imprinted with a stamp which erroneously stated the statutory basis for the reliquidations, the error was harmless because the importer and its surety either knew or had reason to know the actual basis for the reliquidations.

SUMMARY JUDGMENT—CROSS-MOTIONS

In ruling on cross-motions for summary judgment, the court must determine if there exist any genuine issues of material fact and, if there are none, decide whether either party has demonstrated its entitlement to judgment as a matter of law. *Carson M. Simon & Co. v. United States*, 3 CIT—, Slip Op. 82-2 (Jan. 4, 1982); *S.S. Kresge Co. v. United States*, 77 Cust. Ct. 154, 157, C.R.D. 76-6 (1976).

SUMMARY JUDGMENT—STATEMENT OF UNDISPUTED FACTS

If facts set forth in statement of material facts as to which it is contended there is no genuine issue to be tried are not controverted by opposing party, they are deemed admitted. Ct. Int'l Trade R. 56(i). See also *Sewanee Steamship Co. v. United States*, 79 Cust. Ct. 19, 21, C.D. 4708, 435 F. Supp. 389, 390 (1977); *Mobilite, Inc. v. United States*, 70 Cust. Ct. 359, 363-64, C.R.D. 73-11, 358 F. Supp. 267, 271 (1973).

SUMMARY JUDGMENT—EVIDENCE

Party seeking summary judgment may support its motion with affidavits, depositions, answers to interrogatories, exhibits and other evidence which would be admissible at trial. Ct. Int'l Trade R. 56(f); Wright & Miller, *Federal Practice and Procedure* §§ 2721, 2722 (1973).

SUMMARY JUDGMENT—EXISTENCE OF ISSUES OF FACT

On a motion for summary judgment the court is obliged to look beyond the pleadings to the underlying evidentiary facts. Formal denials or general allegations, which create the appearance of dispute but do not set forth specific facts, are not sufficient to foreclose summary judgment. *L. Batlin & Son, Inc. v. United States*, 69 Cust. Ct. 14, 16, C.D. 4365, 345 F. Supp. 996, 998 (1972), aff'd, 61 CCPA 17, C.A.D. 1111, 487 F. 2d 916 (1973); *Royal Bead Novelty Co. v. United States*, 68 Cust. Ct. 154, 156, C.D. 4353, 342 F. Supp. 1394, 1396 (1972).

EQUITABLE ESTOPPEL

Doctrine of equitable estoppel may not be invoked against the government in cases involving the collection or refund of duties. *Air-Sea Brokers, Inc. v. United States*, 66 CCPA 64, C.A.D. 1222, 596 F. 2d 1008 (1979).

EQUITABLE ESTOPPEL

It would be unjust to bind the government by a stamp's erroneous assertion of statutory authority, when the importer either knew or under all of the circumstances should have known the actual statutory basis for the reliquidations. *Matter of Pubs, Inc. of Champaign*, 618 F. 2d 432, 438 (7th Cir. 1980); *N.L.R.B. v. J. D. Industrial Insulation Co.*, 615 F. 2d 1289, 1294 (10th Cir. 1980); *Flagstaff Liquor Co. v. United States*, 73 Cust. Ct. 132, 138, C.D. 4563, 388 F. Supp. 554, 560 (1974); *Bigelow on Estoppel* 604, 681-82 (6th ed. 1913).

AGENCY ACTION—HARMLESS ERROR

Agency action will not be set aside unless the procedural errors complained of were prejudicial to the party seeking to have the action declared invalid. *Woodrum v. Donovan*, 4 CIT —, Slip Op. 82-60 (July 26, 1982), *reh'g denied*, 4 CIT —, Slip Op. 82-78 (Sept. 17, 1982).

[Plaintiff's motion denied; defendant's cross-motion granted.]

(Dated February 1, 1983)

Harvey Barrison for the plaintiff.

J. Paul McGrath, Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (*Jerry P. Wiskin* on the briefs), for the defendant.

RE, Chief Judge: In this action, plaintiff American Motorists Insurance Company, the surety for the importer of record, Hector Rivera-Siaca, seeks the refund of additional duties assessed upon the reliquidation of entries made by Mr. Rivera. Plaintiff alleges that the reliquidations are void because they were erroneously carried out pursuant to section 520(c)(1) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1520(c)(1) (Supp. IV 1980), which authorizes the reliquidation of entries to correct a "clerical error, mistake of fact or other inadvertence." Defendant, in opposition, contends that although some documents were stamped with a legend indicating that the entries were being reliquidated under the authority of section 520(c)(1), the entries were, in fact, reliquidated pursuant to section 521 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1521 (1976). Section 521 permits the reliquidation of entries which Customs has probable cause to believe were made by fraudulent means. Defendant also contends that, even if the reliquidations were ineffective, it may retain the duties under section 592(d) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1592(d) (Supp. IV 1980), which authorizes Customs to collect any duties of which the United States has been fraudulently deprived. Both parties have moved for summary judgment.

The facts of this case establish that Customs reliquidated the subject entries pursuant to section 521, based on the allegedly

fraudulent acts of the importer. Mr. Rivera, the importer, knew that the entries were being reliquidated because they were fraudulently made. Furthermore, plaintiff does not allege that it was unaware of the basis for the reliquidations. Since the use of the wrong stamp did not mislead or prejudice the rights of plaintiff, or the importer, in any way, the court deems the error harmless and finds that the subject entries were properly reliquidated under the authority of section 521. It is, therefore, unnecessary to consider whether Customs might retain the duties pursuant to section 592(d). Plaintiff's motion for summary judgment is denied; defendant's cross-motion is granted.

In ruling on cross-motions for summary judgment, the court must determine if there exist any genuine issues of material fact and, if there are none, decide whether either party has demonstrated its entitlement to judgment as a matter of law. *Carson M. Simon & Co. v. United States*, 3 CIT —, Slip Op. 82-2 (Jan. 4, 1982); *S. S. Kresge Co. v. United States*, 77 Cust. Ct. 154, 157, C.R.D. 76-6 (1976).

Preliminarily, the court must determine what evidentiary materials it will consider in deciding whether any genuine factual issues exist. In addition to the pleadings and official record, which the court may consider without further certification, a party seeking summary judgment must annex to its motion a statement of the material facts as to which it is contended there is no genuine issue to be tried. If the material facts set forth in the statement are not controverted by the opposing party, they are deemed admitted. Ct. Int'l Trade R. 56(i). See also *Suwannee Steamship Co. v. United States*, 79 Cust. Ct. 19, 21, C.D. 4708, 435 F. Supp. 389, 390 (1977); *Mobilite, Inc. v. United States*, 70 Cust. Ct. 359, 363-64, C.R.D. 73-11, 358 F. Supp. 267, 271 (1973).

The moving party may also support its motion for summary judgment with sworn affidavits setting forth such facts as would be admissible in evidence. The affidavits may be supplemented by depositions, answers to interrogatories, exhibits and other evidence which would be admissible at trial. Ct. Int'l Trade R. 56(f); Wright & Miller, *Federal Practice and Procedure* §§ 2721, 2722 (1973). If a motion for summary judgment is properly supported, the adverse party "may not rest upon the mere allegations or denials of his pleadings, but his response * * * must set forth specific facts showing that there is a genuine issue for trial." Ct. Int'l Trade R. 56(f). See also *L. Batlin & Son, Inc. v. United States*, 69 Cust. Ct. 14, 15, C.D. 4365, 345 F. Supp. 996, 997 (1972), aff'd, 61 CCPA 17, C.A.D. 1111, 487 F. 2d 916 (1973).

On these cross-motions for summary judgment, each party has submitted in compliance with Rule 56(i) a statement of allegedly undisputed material facts. In response to plaintiff's statement, defendant specifically controverts plaintiff's assertion that the section 520(c)(1) stamp indicates the basis for the reliquidations, and goes on to make additional assertions of facts tending to prove that the

entries had been reliquidated pursuant to section 521 because of fraud. Plaintiff, rather than controverting defendant's assertions, avers only that they are "subject to trial."

In addition to its statement of undisputed facts, defendant has supported its motion for summary judgment by submitting to the court the following evidentiary items: plaintiff's responses to defendant's requests for admissions; plaintiff's responses to defendant's interrogatories; sworn affidavits, with accompanying exhibits, of four customs officials involved in the reliquidation of the entries; a copy of the importer's bond; and a copy of the "Report of Investigation" generated by Customs investigation of Mr. Rivera's importing practices.

Plaintiff does not object to any of the evidentiary material submitted to the court except certain documents included in the official record transmitted to the court of Customs pursuant to 28 U.S.C. § 2635(a)(1) (Supp. IV 1980). Included in each of the 23 packets of documents constituting the official records of the subject entries are a request for reliquidation, Miami Region Form IV-RC-79(R), and a copy of the Customs Headquarters letter granting the district director of Customs at San Juan permission to request reliquidation of the entries. Plaintiff contends that these two documents should not be included in the official record because they are not among the documents specifically enumerated in section 2635(a)(1), nor do they fall within the class of documents listed in that section. Consequently, plaintiff argues that the court may not consider the Headquarters letter or the requests for reliquidation in deciding these motions for summary judgment.

28 U.S.C. § 2635 provides, in pertinent part:

(a)(1) Upon service of summons on the Secretary of the Treasury in any civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930 or the denial of a petition under section 516 of such Act, the appropriate customs officer shall forthwith transmit to the clerk of the Court of International Trade, as prescribed by its rules, and as a part of the official record—

- (A) The consumption or other entry and the entry summary;
- (B) The commercial invoice;
- (C) The special customs invoice;
- (D) A copy of the protest or petition;
- (E) A copy of the denial, in whole or in part, of the protest or petition;
- (F) The importer's exhibits;
- (G) The official and other representative samples;
- (H) Any official laboratory reports; and
- (I) A copy of any bond relating to the entry.

Plaintiff's contention that the official record is limited to those documents explicitly listed in section 2635(a)(1), or to "like" documents, which plaintiff defines as documents "created by the im-

porter," is erroneous. Section 2635(a)(1) is a "substantial restatement" of 28 U.S.C. § 2632(f) (1976) (repealed 1980). H. Rep. No. 96-1235, 96th Cong., 2d Sess. 54, *reprinted in* 1980 U.S. Code Cong. & Ad. News 3729, 3766. That section, which contained a similar list of documents to be transmitted to the court as part of the official record, was not intended to "restrict the official record to the listed items * * *. It merely specifies the minimum items which the customs officer must transmit to the * * * Court when an action has been instituted." H. Rep. No. 91-1067, 91st Cong., 2d Sess., *reprinted in* 1970 U.S. Code Cong. & Ad. News 3188, 3206. Thus, it is clear that the official record may include documents other than those specifically enumerated in section 2635(a)(1).

Plaintiff correctly observes that the documents which comprise the official record must be limited to documents of the same character as those enumerated in section 2635(a)(1). However, plaintiff's notion of restricting the official record to documents "created by the importer" is ill-conceived. The documents listed in section 2635(a)(1) are those which are usually necessary to give a full account of the administrative action taken with respect to a particular entry. If administrative action is taken with regard to an entry, and that action is not reflected in any of the documents listed in section 2635(a)(1), further documentation is required to make the official record complete.

In this case, the requests for reliquidation instigated the process of reliquidating the subject entries and disclose that the entries were, in fact, reliquidated. Were the court to exclude these documents from the official record, as requested by plaintiff, the official record would not indicate that these entries had been reliquidated at all. It is entirely appropriate, therefore, that the requests for reliquidation be included in the official record.

The Headquarters letter, a copy of which is attached to each entry, would clearly be admissible as evidence at trial and has been separately authenticated in conjunction with the affidavits submitted by defendant. Thus, the court may also consider the Headquarters letter in deciding these motions for summary judgment. Ct. Int'l Trade R. 56(f).

On the question whether there exist any genuine issues of material fact, it is to be noted that on a motion for summary judgement "the court is obliged to look beyond the pleadings to the underlying evidentiary facts of record." *L. Batlin & Son, Inc. v. United States*, *supra*, 69 Cust. Ct. at 16; 345 F. Supp. at 998. "[M]ere formal denials or general allegations, which create the appearance of dispute but do not set forth specific facts, are not sufficient to raise a genuine issue of fact or to foreclose summary judgment." *Royal Bead Novelty Co. v. United States*, 68 Cust. Ct. 154, 156, C.D. 4353, 342 F. Supp. 1394, 1396 (1972).

Plaintiff in this action has failed to controvert specifically defendant's assertions of fact, or to set forth specific facts in support

of its allegation that the subject entries were actually reliquidated pursuant to section 502(c)(1). On the present record, the court has determined that no genuine issues of material fact exist in this case.

The record reveals that between October 19, 1976 and January 2, 1979, Hector Rivera-Siaca, doing business as Guayaberas Don Hector, imported from Mexico and Panama a large quantity of ornamented men's shirts. These importations were covered by 23 separate entries which were liquidated between July 7, 1978 and September 7, 1979. With one exception that resulted in a small refund to the importer, all of the entries were liquidated as entered. American Motorists Insurance Company, the plaintiff in this action, acted as Mr. Rivera's surety throughout this period.

Subsequent to the liquidation of these entries, an informant's tip caused Customs to investigate Mr. Rivera's importing practices. On September 25, 1979, in an interview with a customs agent, Mr. Rivera admitted that from 1975 through 1979 he had engaged in a double-invoicing scheme which resulted in the value of imported goods being falsely understated by 50 to 65 percent. By falsely understating the values of the imported goods, Mr. Rivera was able to avoid paying the full amount of duties owed on each entry.

These admissions led Customs to conclude that there was probable cause to believe that fraudulent conduct was present in connection with the 23 entries that are the subjects of this action. On October 3, 1979, Mr. Rivera volunteered to surrender the merchandise still in his possession in partial payment of the duties owed.

In a letter from Customs Headquarters, dated February 7, 1980, the district director of Customs at San Juan was directed to reliquidate the entries pursuant to the authority of section 521 of the Tariff Act of 1930, 19 U.S.C. § 1521 (1976). That section provides:

§ 1521 Reliquidation on account of fraud

If the appropriate customs officer finds probable cause to believe there is fraud in the case, he may reliquidate an entry within two years (exclusive of the time during which a protest is pending) after the date of liquidation or last reliquidation.

Following these instructions, the district director issued requests for reliquidation for each of the 23 entries. The requests for reliquidation, which were issued on or about February 27, 1980, were made on Miami Region Form IV-RC-79(R).

Form IV-RC-79(R) is a single-page document which, among other things, contains a list of the several possible statutory bases for reliquidation of an entry. Beside each item on this list is a box which the person making the request must mark to indicate the statutory basis for the requested reliquidation. The statutory bases listed include " Section 520, (Refund due to clerical error)" and " Section 521, (Account of Fraud)." On the requests for reliquidation issued on each of the 23 entries involved in this action, the box

beside "Section 521, (Account of Fraud)" is marked with an "X". Each reliquidation request also contained recommended values for the merchandise covered by that entry.

A reliquidation request and a copy of the February 7 Headquarters letters were attached to the entry papers for each of the 23 entries and all were forwarded to a Customs Service liquidator at the Miami Region. It was the liquidator's task to reliquidate the entries, calculating the amount of duties actually owed on each entry.

When the liquidator who received the 23 reliquidation requests had completed the necessary calculations, she imprinted each of the IV-RC-79(R) forms with the following stamp:

RELIQUIDATION

Sec. 520(c)(1), TA 1930

Ascertained Duty \$—.

Estimated Duty Paid \$—.

Increase-Refund \$—.

The liquidator then inserted by hand the amounts determined by her calculations for each of the entries. In each case, these reliquidations resulted in an increase in the amount of duties owed by the importer. The adding machine tape produced by the liquidator's calculations was attached to the consumption entry form previously filed for each entry. These tapes were also imprinted with a stamp indicating that the reliquidations has been carried out pursuant to section 520(c)(1) of the Tariff Act of 1930.

Section 520(c)(1) provides:

(c) Reliquidation of entry

Notwithstanding a valid protest was not filed, the appropriate customs officer may, in accordance with regulations prescribed by the Secretary, reliquidate an entry to correct—

(1) a clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of a law, adverse to the importer and manifest from the record or established by documentary evidence, in any entry, liquidation, or other customs transaction, when the error, mistake, or inadvertence is brought to the attention of the appropriate customs officer within one year after the date of liquidation or exaction; * * *

A reliquidation under this provision invariably results in a refund to the importer.

In her affidavit submitted to the court, the customs liquidator who carried out these reliquidations stated that the section 520(c)(1) stamp was used on all reliquidated entries, regardless of the statutory basis for the reliquidation, because it was the only reliquida-

tion stamp available at the Miami Region office. Despite using the inappropriate stamp, the liquidator further stated that she had carried out the reliquidations according to the instructions given by the district director on the IV-RC-79(R) forms, i.e., pursuant to section 521 of the Tariff Act of 1930, using the values recommended by the district director.

The 23 entries in this action were finally reliquidated on April 25, 1980. Since Mr. Rivera was unable to pay the increased duties, demand was made upon his surety, American Motorists Insurance Company, the plaintiff in this action.

Plaintiff paid the increased duties and filed timely protests which were denied. In denying the protests, Customs indicated that the reliquidations had been properly carried out pursuant to section 521.

It is clear that following its investigation of Mr. Rivera, Customs had probable cause to believe that the 23 entries in this action were fraudulently made. Thus the entries were subject to reliquidation under section 521 at any time within two years of their prior liquidation. Relying on the authority of section 521, Customs reliquidated the entries. Customs, however, imprinted some documents with a stamp indicating that the reliquidations were being carried out under a different provision which was obviously inappropriate and incorrect.

The question presented pertains to the legal effect of the use of the inappropriate stamp on the validity of the underlying reliquidations. Plaintiff argues that an importer is entitled to an accurate representation as to the statutory basis for liquidation or reliquidation of an entry, and that, having used a stamp indicating that the entries were reliquidated pursuant to section 520(c)(1), Customs is barred from asserting that the entries were reliquidated under any other authority. According to plaintiff, since the entries could not lawfully be reliquidated under section 520(c)(1), the reliquidations are void.

Defendant agrees that the entries could not be reliquidated pursuant to section 520(c)(1), but contends that the section 520(c)(1) stamp is not conclusive evidence of the statutory basis for the reliquidations. Defendant submits that plaintiff is seeking an estoppel against the Government acting in its sovereign capacity, a result which is not permissible under the law.

Although plaintiff chooses not to characterize it as such, the request that the court find customs bound by its use of the section 520(c)(1) stamp must be construed as an attempt to invoke the doctrine of equitable estoppel. See *Flagstaff Liquor Co. v. United States*, 73 Cust. Ct. 132, 135, C.D. 4563, 388 F. Supp. 554, 558 (1974). The application of this doctrine in cases involving the collection or refund of duties on imports was authoritatively rejected by the Court of Customs and Patent Appeals in *Air-Sea Brokers, Inc. v. United States*, 66 CCPA 64, C.A.D. 1222, 596 F. 2d 1008 (1979).

In *Air-Sea Brokers*, the plaintiff sought duty-free entry for certain imported items although it had failed to file the required documentation. Plaintiff claimed that because Customs had stamped certain documents, RC-1-24's, with the word "canceled," it had waived the documentary requirement and was barred from asserting otherwise. The court permitted the government to prove that the documentary requirement had not been waived, stating:

When acting in its sovereign capacity, the Government is acting for the benefit of the general public—a role clearly embracing the collection or refund of duties on imports. Accordingly, we hold that equitable estoppel, even if available in cases involving the Government in its proprietary capacity, is not available against the Government in cases involving the collection or refund of duties on imports.

66 CCPA at 68; 596 F. 2d at 1011.

Like the "canceled" stamp which was before the court in *Air-Sea Brokers*, the section 520(c)(1) stamp in the instant case "is not conclusive and must be considered in light of all the evidence." 66 CCPA at 67; 596 F. 2d at 1010. The evidence in the present case establishes beyond question that the subject entries were reliquidated pursuant to section 521.

Although estoppel may not be invoked against the government in cases involving the collection or refund of duties, the principles of equitable estoppel nevertheless disclose that, in this case, it would be unjust to bind the government by the stamp's erroneous assertion of the statutory authority for the reliquidations. Estoppel is an equitable device used to achieve a just and fair result when one person has relied in good faith on the word or inaction of another. An estoppel arises when, in the course of a transaction, one party misrepresents a material fact, intending the other party to rely upon its truthfulness. If the other party acts in reliance upon the representation, the party making the representation may not later deny its truth if the denial would harm or prejudice the other's rights. See *Bigelow on Estoppel* 603-4 (6th ed. 1913). See also *Dobbs, Remedies* 42 (1973). If, however, the fact misrepresented was "equally open to the knowledge of both parties * * * equity will not grant relief." *Bigelow on Estoppel* at 604.

The person * * * who claims the benefit of this estoppel must show that he was ignorant of the truth in regard to the representation; and he must have been permissibly ignorant thereof. * * * If he knew or under all the circumstances ought to have known the facts, the estoppel * * * falls to the ground.

Id. at 681-82. See also *Matter of Pubs, Inc. of Champaign*, 618 F. 2d 432, 438 (7th Cir. 1980); *N.L.R.B. v. J.D. Industrial Insulation Co.*, 615 F. 2d 1289, 1294 (10th Cir. 1980); *Flagstaff Liquor Co. v. United States*, 73 Cust. Ct. 132, 138, C.D. 4563, 388 F. Supp. 554, 560 (1974).

In this case, the importer, Mr. Rivera, had admitted the fraud; he was fully aware of the basis for the reliquidations and had voluntarily surrendered the goods still in his possession in partial payment of the duties he owed. Furthermore, both the importer and the plaintiff had more than adequate opportunity to learn of the actual basis for the reliquidations by examining the entry papers.

The official record discloses that each of the IV-RC-79(R) forms bearing the misleading stamp also has a list of the possible statutory bases for reliquidation. On each form the box next to "Section 521 (Account of Fraud)" is checked. This blatant contradiction on the face of the IV-RC-79(R) forms is certainly enough to alert any interested party, including the surety, to the possibility of error. Furthermore, the section 520(c)(1) stamp was an obvious error. Section 520(c)(1) authorizes reliquidations to correct errors *adverse* to the importer. Thus, reliquidations under that provision invariably result in a refund to the importer. Each of the reliquidations covered by this action resulted in an assessment of additional duties.

Any possible ambiguity created by the presence of the section 520(c)(1) stamp was dispelled by the copy of the Headquarters letter attached to each entry. That letter describes the alleged fraud perpetrated by Mr. Rivera and advises the district director to reliquidate the entries pursuant to the authority of section 521. Under these circumstances, it is apparent that both the importer and the plaintiff either knew or should have known that the entries were being reliquidated under the authority of section 521. In fact, plaintiff does not allege that it, or the importer, was unaware of the true statutory basis for these reliquidations.

When procedural errors are committed during the course of agency action, courts are empowered to set aside that action. 5 U.S.C. 706(2)(D) (1976). Nevertheless, agency action will not be set aside "unless the procedural errors complained of were prejudicial to the party seeking to have the action declared invalid." *Woodrum v. Donovan*, 4 CIT —, Slip Op. 82-60 at 14-15 (July 26, 1982), *rehearing denied*, 4 CIT —, Slip Op. 82-78 (Sept. 17, 1982).

In the present case, plaintiff has failed to demonstrate that the use of the erroneous stamp actually misled anyone. Neither has plaintiff suggested how the presence of the stamp prejudiced its rights.

Plaintiff having suffered no prejudice as a result of the error committed by Customs, it is the determination of the court that the subject entries were properly reliquidated under the authority of section 521 of the Tariff Act of 1930, 19 U.S.C. 1521 (1976).

Plaintiff's motion for summary judgment is denied; defendant's cross-motion for summary judgment is granted.

Decisions of the United States Court of International Trade

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, February 3, 1983.

The following abstracts of decisions of the United States Court of International Trade at New York are published for the information and guidance of officers of the Customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to Customs officials in easily locating cases and tracing important facts.

WILLIAM VON RAAB,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P83/28	Newman, J., January 27, 1988	John Henry Division of Manhattan Industries	80-10-01698	Item 380.04 42.5%	Item 380.84 25¢ per lb. + 27.5%	Agreed statement of facts	Seattle men's shirts
P83/29	Ford, J., January 28, 1988	A. N. Deringer for the account of Miracle Exclusives, Inc.	81-2-00216	Item 772.15 or 8.5%	Item 666.00 Duty free	U.S. v. Miracle Exclusives, Inc. No. 81-17 (CCPA 12/30/81)	Champlain-Rouses Point (Ogdensburg) Plastic germination trays
P83/30	Ford, J., January 28, 1988	A. N. Deringer for the account of Miracle Exclusives, Inc.	81-12-01669	Item 772.15 or 8.5%	Item 666.00 Duty free	U.S. v. Miracle Exclusives, Inc. No. 81-17 (CCPA 12/30/81)	Champlain-Rouses Point (Ogdensburg) Plastic germination trays
P83/31	Newman, J., January 28, 1988	Chrysler Corp.	72-5-00999	Item 696.15 10.5%, 9.4%, 8% or 7%	Item 680.45 8%, 7%, 6% or 5%	Eaton Manufacturing Co. v. U.S. (C.D. 4207, rev'd and remanded C.A.D. 1076, further remanded C.D. 4571)	New York Outboard drives and parts
P83/32	Newman, J., January 28, 1988	Colonial Printing Ink Co.	79-5-00749, etc.	Item 406.70 20%	Item 474.26 2%	Agreed statement of facts	New York India
P83/33	Newman, J., January 31, 1988	Border Brokerage Co., Inc.	74-2-00561, etc.	Item 731.60 15% or 12.5%	Item 745.68 10% or 8.5%	Border Brokerage Co. v. U.S., Slip Op. 81-168 (CITT 11/16/81)	Blaine (Seattle) Halibut or salmon snaps
P83/34	Newman, J., February 1, 1988	Coleco Industries, Inc.	79-9-01479	Item 685.90 8.5%	Item A 685.90 Free of duty pursuant to Generalized System of Preferences	Agreed statement of facts	New York Photo detector harnesses; products of eligible beneficiary developing country
P83/35	Newman, J., February 2, 1988	Mitsui & Co. (USA), Inc.	82-3-00362	Item 609.96 8.5% + additional duties on alloy content	Item 609.82 0.1¢ per lb. + 2% + additional duties on alloy content	Philip Overseas, Inc. v. U.S. (C.D. 4859, aff'd C.A.D. 1263)	Philadelphia Hot rolled, annealed and pickled stainless steel angles

Decisions of the United States Court of International Trade

Abstracts

Abstracted Reappraisal Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R88/119	Re C.J. January 27, 1983	Mitsui & Co. (USA), Inc.	75-7-01685	Export value	Appraised values shown on entry papers less additions included to reflect currency fluctuation	C.B.S. Imports Corp. v. U.S. (C.D. 4789)	New York Not stated
R88/120	Watson J. January 28, 1983	Providence Import Co.	252259-A, etc.	Export value	Appraised values less 7.5% thereof	Agreed statement of facts	New York Wool hooked rugs, etc.
R88/121	Watson, J. January 28, 1983	Starlight Trading, Inc.	R88/586, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Cotton wearing apparel, etc.

R88/122	Watson, J. January 28, 1983	Starlight Trading, Inc. etc.	R68/18526, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Cotton wearing apparel, etc.
R88/123	Watson, J. January 28, 1983	Starlight Trading, Inc. etc.	R61/7469, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Cotton articles
R88/124	Watson, J. January 28, 1983	W. J. Byrnes	R69/7088, etc.	Export value	Appraised values less 7.5% thereof	Agreed statement of facts	Los Angeles Cotton yarn rug, wool rug, etc.
R88/125	Watson, J. January 28, 1983	W. R. Zanes & Company (Trans- Ocean Import Co., Inc.)	R60/5692	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Houston Wool rug
R88/126	Newman, J. January 28, 1983	Topp Electronics Inc.	79-1-00152- S	Constructed value	Value specified on entry papers by liquidating officer excluding one-half of amount added for assists as set forth in schedule of protests attached to decision and judgment	Agreed statement of facts	Seattle Not stated
R88/127	Watson, J. January 31, 1983	Hayim & Co.	241325-A, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Rugs and mats

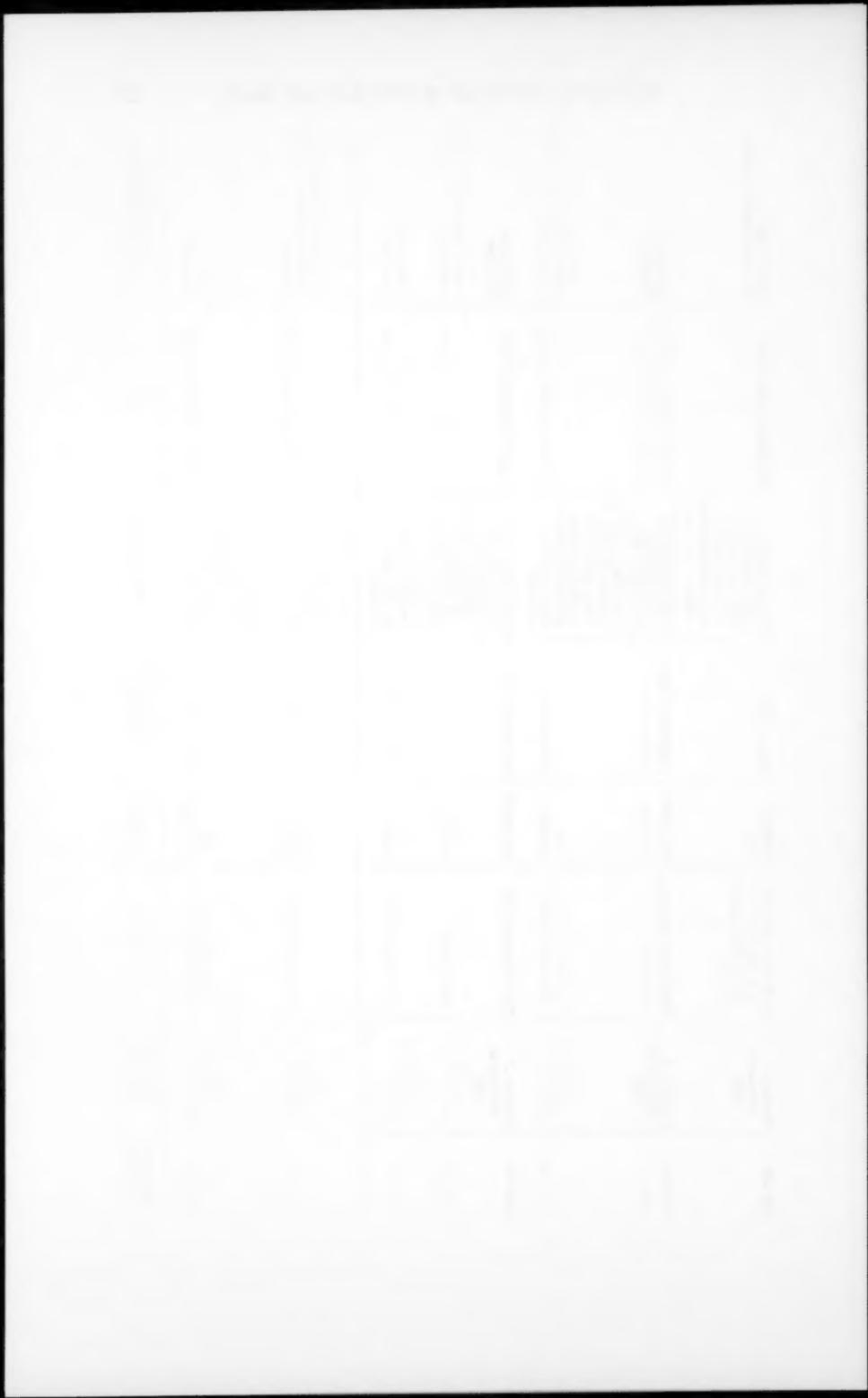
DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R83/128	Watson, J., January 31, 1988	Hayim & Co.	246705-A, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Seattle Wool hooked rugs, wool and cotton tubular mats
R83/129	Watson, J., January 31, 1988	Hayim & Co.	247038-A, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Baltimore Wool hooked rugs, wool and cotton mats
R83/130	Watson, J., January 31, 1988	Providence Import Co.	252935-A, etc.	Export value	Appraised values less 7.5% thereof	Agreed statement of facts	New York Wool and cotton rugs, etc.
R83/131	Watson, J., January 31, 1988	Rugby International Corp.	R67/19298, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Charleston Tube mats
R83/132	Watson, J., January 31, 1988	Rugby Rag Mills, Inc.	R58/25187, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Baltimore Wool tube mats
R83/133	Watson, J., January 31, 1988	W. J. Byrnes	R59/14713, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Wool tube rugs

R88/134	Watson, J. February 1, 1988	Hayim & Co.	250824-A, etc.	Export value	New York Not stated
R88/135	Watson, J. February 1, 1988	Hayim & Co.	R68/25169, etc.	Export value	Baltimore Wool hooked rugs, etc.
R88/136	Watson, J. February 1, 1988	Hayim & Co.	R69/17524, etc.	Export value	New York Rugs
R88/137	Watson, J. February 1, 1988	Hayim & Co. et al.	R60/5115, etc.	Export value	Baltimore Wool hooked rugs, etc.
R88/138	Watson, J. February 1, 1988	Hayim & Co.	R61/638, etc.	Export value	San Francisco Wool hooked rugs, etc.
R88/139	Watson, J. February 1, 1988	Providence Import Co.	214006-A, etc.	Export value	New York Cotton yarn rugs, etc.
R88/140	Watson, J. February 1, 1988	Providence Import Co.	269828-A, etc.	Export value	New York Wool and cotton hooked rugs, etc.
R88/141	Watson, J. February 2, 1988	Fortune Star Products Co. et al.	R66/10075, etc.	Export value	New York Batteries, rugs, mats, etc.

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f.o.b. unit invoice
prices and appraised
valuesAppraised values less
7.5% thereofF.o.b. unit invoice
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difference between
f.o.b. unit invoice
prices and appraised
values

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R88/142	Watson, J. February 2, 1983	Imported Rug Associates, Ltd.	R65/15072, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Rugs
R88/143	Watson, J. February 2, 1983	Jacobs & Rankin, Inc.	R65/2174, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Transistor radios, accessories and parts; entitlements
R88/144	Watson, J. February 2, 1983	Lipmans Imports, Inc.	265948-A, etc.	Export value	Appraised value less 7.5% thereof	Agreed statement of facts	New York Pipe fittings
R88/145	Watson, J. February 2, 1983	Shalom & Co.	R65/6380, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Cotton tablecloths, napkins, etc.
R88/146	Watson, J. February 2, 1983	Trans-Ocean Import Co., Inc.	288097-A, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Philadelphia Cotton rugs, wool hooked rugs, etc.
R88/147	Watson, J. February 2, 1983	Transworld International Service Co.	R65/9281, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Fabric

R83/148	Watson, J. February 2, 1988	W. R. Zantes & Co. of L.A., Inc., et al. (Trans-Ocean Import Co., Inc.)	279062-A, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New Orleans Wool and braided rugs, etc.
R83/149	Newman, J. February 2, 1988	Topp Electronics, Inc.	79-7-01200	Constructed value	Values specified on entry papers by liquidating officer excluding one-half of amount added for assists as set forth on schedule of protests attached to decision and judgment	Agreed statement of facts	Los Angeles Not stated
R83/150	Newman, J. February 2, 1988	Topp Electronics, Inc.	80-12-00156	Constructed value	Values specified on entry papers by liquidating officer excluding one-half of amount added for assists as set forth on schedule of protests attached to decision and judgment	Agreed statement of facts	Los Angeles Not stated



International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY, *February 9, 1983*

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned.

WILLIAM VON RAAB,
Commissioner of Customs.

In the matter of
CERTAIN SNEAKERS WITH FABRIC
UPPERS AND RUBBER SOLES } Investigation No. 337-TA-118

***Notice of Termination of Seven Respondents Based on a
Settlement Agreement***

AGENCY: U.S. International Trade Commission.

ACTION: Termination of investigation with respect to respondents Melville Corp., Thom McAn Shoe Co., Inc., Stride-Rite Footwear, Inc., Stride-Rite International, Ltd., Stride-Rite Corp., Genesco, Inc., and San Shoe Trading Corp. based on a settlement agreement.

SUMMARY: On September 24, 1982, complainant Van Doren Rubber Co., Inc. and the aforementioned respondents filed a joint motion, Motion No. 118-14, to terminate the investigation with respect to the aforementioned respondents on the basis of a settlement agreement. On November 8, 1982, the presiding officer recommended that the Commission grant the motion. The Commission published a Federal Register notice on December 15, 1982, seeking comments from interested members of the public and other govern-

ment agencies on the proposed termination of the aforementioned respondents, (47 F.R. 56217). No comments were received. On January 20, 1983, the Commission granted the motion to terminate the investigation with respect to the aforementioned respondents on the basis of the settlement agreement.

SUPPLEMENTARY INFORMATION: This investigation is being conducted under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and concerns alleged unfair trade practices in the importation into and sale in the United States of certain sneakers with fabric uppers and rubber soles. The Commission published notice of the institution of this investigation in the Federal Register of March 9, 1982, (47 F.R. 10103).

Copies of the Commission's Action and Order and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Catherine R. Field, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0143.

By order of the Commission.

Issued: January 21, 1983.

KENNETH R. MASON,
Secretary.

In the matter of
CERTAIN MINIATURE, BATTERY-
OPERATED, ALL-TERRAIN,
WHEELED VEHICLES

Investigation No. 337-TA-122

Notice of Denial of Petition for Reconsideration

AGENCY: U.S. International Trade Commission.

ACTION: Denial of petition for reconsideration of the Commission's determination in the above-referenced investigation.

SUPPLEMENTARY INFORMATION: On October 15, 1982, the Commission concluded the above-captioned investigation under section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) with a determination that there is no violation of that section in the importation into and sale in the United States of certain miniature, battery-operated, all-terrain, wheeled vehicles. On November 2, 1982, the Commission's Unfair Import Investigations Division (UIID) filed a petition for reconsideration, under 19 CFR § 210.58, of the Commission's determination.

On January 25, 1983, the Commission denied the petition for reconsideration.

Copies of the Commission's Action and Order and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Wayne W. Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0480.

By order of the Commission.

Issued: January 25, 1983.

KENNETH R. MASON,
Secretary.

In the matter of
CERTAIN VERTICAL MILLING
MACHINES AND PARTS,
ATTACHMENTS AND
ACCESSORIES THERETO

Investigation No. 337-TA-133

Notice of Commission Review of Initial Determination, Amendment of Notice of Investigation and More Complicated Designation

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined upon petitions for review received from respondents in this investigation and complainant's response to the petitions to review an initial determination granting a motion to amend the notice of investigation. Pursuant to that review the Commission has determined to grant the motion to amend the notice of investigation as noted below. In addition, the Commission has determined to declare this investigation more complicated and establish an administrative deadline at fifteen months after publication of the original notice of investigation. The presiding officer's initial determination on violation of section 337 shall be issued and the record of the investigation certified to the Commission within eleven and a half months of the publication of the original notice of investigation.

AUTHORITY: The authority for Commission disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and in sections 210.15, 210.22, and 210.54 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.15, 210.22, 210.54).

SUPPLEMENTARY INFORMATION: The initial determination was issued in response to complainant's, Textron, Inc., motion to amend the notice of investigation to include 160 counts allegedly omitted from the notice of investigation. The original notice of investigation published in the Federal Register of November 17, 1982 (47 F.R. 51821), contained 140 counts alleged against 43 named respondents. The presiding officer granted the motion to amend the notice of investigation and required complainant to submit a brief statement of facts upon which it bases each allegation against each respondent. In addition, the presiding officer stated that the period for completion of the investigation would run from the date of publication of the amended notice of investigation in the Federal Register.

The Commission received three petitions for review from respondents pursuant to section 210.54 of the Commission's Rules of Practice and Procedure. These petitions requested that the Commission deny the motion to amend the notice of investigation. Complainant filed a response to the petitions requesting denial of review.

Based upon the petitions for review and the response thereto, the Commission has determined that a review of the initial determination is warranted. Furthermore, the Commission determined that the notice of investigation should be amended to reflect the following counts against the named respondents. This notice shall be read in conjunction with the original notice of investigation published in the Federal Register of November 17, 1982 (47 F.R. 51821).

The letters in column 2 in table below indicate which of the acts or methods listed in paragraph one of the original notice of investigation applies.

Lilian Machinery Industrial Co., Ltd.....	a, c-h
Poncho Enterprise Co., Ltd.....	a, c-h
Hon Yeong Machinery Industrial Co., Ltd.	a-f, h
Pal-Up Enterprises Co., Ltd.....	a-f, h
She Hong Industrial Co., Ltd.....	a-f, h
Yeong Chin Machinery Industries Co., Ltd.	a-h
Yun Fu Machinery Co., Ltd.....	a-f, h
Chanun Machine Tool Co., Ltd	a-f, h
Fu Shanlong Industry Co., Ltd.....	a, c-f, h
Jenq Shing Enterprises Co., Ltd	a, c-f, h
M.I.T. Machinery & Tool Co., Ltd.....	a, c-h
Lio Ho Machine Works, Ltd	a, c-f, h
Long Chang Machinery Co., Ltd	a, c-f, h
Maw Chang Machinery Co., Ltd	a, c-f, h
Nahshon Machinery Co., Ltd	a, c-f, h
Hsu Pen Machinery Co.....	a, c-f, h
Kiheung Machinery Works	a, c-f, h
Shye Shing Machinery Mfg. Co., Ltd	a, c-f, h
Kingtex Corp.....	a, c-f, h

Great International Corp.....	a, c-f, h
King Machinery Inc.....	a-f, h
Warner Tool & Machinery Sales, Inc	a, c-h
Big-Joe Industrial Tool Corp	a, c-h
ABC Industrial Machine Tool Co	a, c-h
Kanematsu-Goso, U.S.A., Inc	a, c-f, h
Rutland Tool & Supply Co., Inc	a-h
Haerr Machinery Inc.....	a-h
Cadillac Machines Inc	a-h
Kabaco Tools, Inc	a-h
Webb Machinery Corp.....	a-h
Select Machine Tool Co	a-h
Delta Machine & Tool Co., Inc	a, c-f, h
Jet Equipment & Tools Inc.....	a, c-f, h
Pilgrim Industries Inc	a, c-f, h
Republic Machinery Co., Inc	a-f, h
South Bend Lathe, Inc.....	a, c-h
Luson International Distributors Inc	a-h
Intermark-Hartford Corp.....	a-h
Enco Manufacturing Co	a, c-h
Y.C.I. U.S.A. Inc.....	a-h
Yamazen U.S.A. Inc.....	a-h
DoAll Co.....	a, c-f, h
Deka Machine Sales Corp.....	a, c-f, h

In addition to amending the notice of investigation, the Commission determined to declare this investigation more complicated pursuant to section 210.15 of the Commission Rules of Practice and Procedure. This investigation involves forty-three respondents and three hundred counts against these respondents. Even in its initial stages, this investigation has involved numerous motions and extensive discovery. Rendering a determination on all of the three hundred counts against these respondents may prove impracticable within twelve months, particularly in light of the additional effort involved with the amended notice of investigation. Declaring the investigation more complicated will ensure that respondents have adequate notice and time to prepare to meet any counts included in the amended notice. Accordingly the administrative deadline in this investigation is set at fifteen months from the date of publication of the original notice of investigation. The presiding officer shall certify the record and issue an initial determination in this investigation within eleven and a half months of the date of publication of the original notice in the Federal Register.

Copies of the Commission's action and order and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW, Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Catherine R. Field, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0143.

By order of the Commission.

Issued: January 26, 1983.

KENNETH R. MASON,
Secretary.

In the matter of
CERTAIN HANDBAGS, LUGGAGE,
AND BRIEFCASES } Investigation No. 337-TA-126

Notice of Commission Decision not To Review Initial Determination To Terminate Investigation With Respect to One Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Termination of investigation as to respondent Edison Brothers Stores, Inc.

AUTHORITY: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and in subsections 210.53 (c) and (h) of the Commission's Rules of Practice and Procedure (47 F.R. 25134, June 10, 1982; to be codified at 19 CFR §§ 210.53 (c) and (h)).

SUPPLEMENTARY INFORMATION: On January 7, 1983, complainant FHL Accessories, Inc. (hereinafter "FHL"), filed a motion (Motion No. 126-7) to dismiss Edison Brothers Stores, Inc., as a party respondent because that respondent has given FHL written assurances that it no longer is selling goods alleged to infringe an alleged common-law trademark owned by FHL. On January 11, 1983, the presiding officer filed an initial determination with the Commission granting the motion.

Pursuant to section 210.53(h)(2) of the Commission's rules, an initial determination of the presiding officer under section 210.53(c) becomes the determination of the Commission fifteen (15) days from the date of service, unless the Commission orders review of the initial determination.

Having examined the record in this investigation, including Motion No. 126-7 and the initial determination of the presiding officer, the Commission found no grounds for review of the initial determination.

Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary,

U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Clarease E. Mitchell, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0421.

By order of the Commission.

Issued: January 26, 1983.

KENNETH R. MASON,
Secretary.

Investigation Nos. 104-TAA-16, 17, and 18

CERTAIN NONRUBBER FOOTWEAR FROM BRAZIL, INDIA, AND SPAIN

AGENCY: United States International Trade Commission.

ACTION: Institution of countervailing duty investigations and scheduling of a hearing to be held in connection with the investigations.

EFFECTIVE DATE: January 25, 1983.

SUMMARY: Pursuant to section 104(b)(2) of the Trade Agreements Act of 1979 (19 U.S.C. § 1671), the U.S. International Trade Commission is instituting countervailing duty investigations to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of certain nonrubber footwear from Brazil, India, and Spain covered by an outstanding countervailing duty order, if the order were to be revoked. The investigations cover imports of nonrubber footwear provided for in items 700.05-.45; 700.56; 700.72-.83; and 700.95 of the Tariff Schedules of the United States (TSUS). With respect to India, the investigation covers all of the above footwear except huaraches (TSUS item 700.05); leather ski boots (TSUS item 700.28); and chappals, slippers and footwear having an open toe and heel, however provided for in part 1, subpart A of Schedule 7 in the TSUS.

FOR FURTHER INFORMATION CONTACT: Mr. Reuben Schwartz (202-523-0114), Chief, Textiles, Leather Products, and Apparel Division, U.S. International Trade Commission.

SUPPLEMENTARY INFORMATION:

Background.—On September 12, 1974, the Department of the Treasury (Treasury) issued countervailing duty orders T.D. 74-233 and T.D. 74-235, under section 303 of the Tariff Act of 1930 (19 U.S.C. § 1303), on certain nonrubber footwear imported from Brazil and Spain, respectively (39 F.R. 32903 and 39 F.R. 32904). On October 26, 1979, Treasury issued countervailing duty order T.D. 79-275

on certain nonrubber footwear imported from India (44 F.R. 61588). On January 1, 1980, the provisions of the Trade Agreements Act of 1979 (P.L. 96-39) became effective, and on January 2, 1980, the authority for administering the countervailing duty statutes was transferred from Treasury to the Department of Commerce (Commerce).

Participation in the investigations.—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's Rules of Practice and Procedure (19 CFR § 201.11, as amended by 47 F.R. 6189, Feb. 10, 1982), not later than 21 days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Upon the expiration of the period for filing entries of appearance, the Secretary shall prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations pursuant to section 201.11(d) of the Commission's rules (19 CFR § 201.11(d), as amended by 47 F.R. 6189, Feb. 10, 1982). Each document filed by a party to these investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service (19 CFR § 201.16(c), as amended by 47 F.R. 33682, Aug. 4, 1982).

Staff report.—A public version of the staff report containing preliminary findings of fact in these investigations will be placed in the public record on April 1, 1983, pursuant to section 207.21 of the Commission's rules (19 CFR § 207.21).

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 10:00 a.m., on April 19, 1983, at the U.S. International Trade Commission Building, 701 E Street NW, Washington, D.C. 20436. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on March 24, 1983. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m., on March 28, 1983, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is April 12, 1983.

Testimony at the public hearing is governed by section 207.23 of the Commission's rules (19 CFR § 207.23, as amended by 47 F.R. 33682, Aug. 4, 1982). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. All legal arguments, economic analyses, and factual materials relevant to the public hearing

should be included in prehearing briefs in accordance with section 207.22 (19 CFR § 207.22, as amended by 47 F.R. 33682, Aug. 4, 1982). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR § 207.24, as amended by 47 F.R. 6191, Feb. 10, 1982) and must be submitted not later than the close of business on April 26, 1983.

Written submissions.—As mentioned, parties to these investigations may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before April 26, 1983. A signed original and fourteen (14) true copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the Commission's rules (19 CFR § 201.8, as amended by 47 F.R. 6188, Feb. 10, 1982, and 47 F.R. 13791, Apr. 1, 1982). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's rules (19 CFR § 201.6).

For further information concerning the conduct of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207, as amended by 47 F.R. 6190, Feb. 10, 1982, and 47 F.R. 33682, Aug. 4, 1982), and part 201, subparts A through E (19 CFR part 201, as amended by 47 F.R. 6188, Feb. 10, 1982; 47 F.R. 13791, Apr. 1, 1982; and 47 F.R. 33682, Aug. 4, 1982).

This notice is published pursuant to section 207.20 of the Commission's rules (19 CFR § 207.20, as amended by 47 F.R. 6190, Feb. 10, 1982).

By order of the Commission.

Issued: January 27, 1983.

KENNETH R. MASON,
Secretary.

Investigation No. 751-TA-7

SALMON GILL FISH NETTING OF MANMADE FIBERS FROM JAPAN

Notice of Institution of Section 751(b) Review Investigation

AGENCY: United States International Trade Commission.

ACTION: Institution of Section 751(b) review investigation concerning the affirmative determination in investigation No. AA1921-85, Fish Nets and Netting of Manmade Fibers from Japan.

EFFECTIVE DATE: January 28, 1983.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has initiated an investigation pursuant to section 751(b) of the Tariff Act of 1930, 19 U.S.C. § 1675(b) (Supp. III 1979), to review its determination in investigation No. AA1921-85. The purpose of the investigation is to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, if the anti-dumping order regarding fish netting of manmade fibers from Japan were to be modified or revoked with respect to salmon gill fish netting of manmade fibers provided for in item 355.45 of the Tariff Schedules of the United States. Pursuant to section 207.45(b) of the Commission's Rules of Practice and Procedure, the 120-day period for completion of this investigation begins on the date of publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Daniel Leahy, senior investigator, Office of Investigations, U.S. International Trade Commission, 202-523-1369 or Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, 202-523-0079.

SUPPLEMENTARY INFORMATION:

Background.—On April 18, 1972, the Commission determined that an industry in the United States was injured within the meaning of the Antidumping Act, 1921, by reason of imports of fish netting of manmade fibers from Japan determined by the Secretary of Treasury to be sold or likely to be sold at less than fair value (investigation No. AA1921-85).

On June 1, 1972, the Department of the Treasury issued a finding of dumping, T.D. 72-158, and published notice thereof in the Federal Register, 37 F.R. 11560.

On October 14, 1981, following receipt of a request to review its affirmative determination in investigation No. AA1921-85, the Commission instituted investigation No. 751-TA-5, Salmon gill fish netting of manmade fibers from Japan. On March 31, 1982, the Commission unanimously determined that the establishment of an industry in the United States would be materially retarded, by reason of imports of salmon gill fish netting of manmade fibers from Japan covered by antidumping order T.D. 72-158, if the order were to be modified or revoked.

This determination was supported by the finding that the domestic production of salmon gill fish netting was so insignificant that there is no established domestic industry producing salmon gill fish

netting in the United States. The Commission also found that Nylon Net Co. of Memphis, Tenn., one of the largest domestic producers of fish netting, had made substantial investments in the development of a marketable crystal salmon gill netting. Nylon Net Co. was developing a manmade fiber yarn in a joint project with Firestone Fibers & Textile Co., which would permit Nylon net to produce netting that would be competitive with the imported Japanese netting. In the presentation of its position during the investigation, Nylon Net relied on Firestone's capacity to produce 1.5 million pounds of yarn per year. Nylon Net's ability to enter the salmon gill fish netting market was presented as being dependent on the production of the yarn by Firestone.

On November 24, 1982, following receipt of information that Firestone Fibers & Textile Co. expected to cease production of nylon, the Commission requested comments regarding the institution of a new section 751(b) review investigation (47 F.R. 53152). Comments were received from counsel representing nine Pacific Northwest importers of salmon gill netting (the petitioners in investigation No. 751-TA-5), counsel representing the America Netting Manufacturers Organization (ANMO), counsel for Nichimen Corporation (an exporter of salmon gill net to the United States), counsel for the Fishing Nets and Twine Division of the Japan Textile Products Exporters' Association, counsel for Trans-Pacific Trading, Inc. (an importer of salmon gill netting), and the firm of McClary, Swift & Co. (Custom house brokers). On the basis of the comments filed, the Commission, on January 25, 1983, voted to institute investigation No. 751-TA-7. The Commission determined that the following changed circumstances existed which were sufficient to warrant a review:

- (1) Firestone Fibers & Textile Co. has ceased production of nylon fiber at its Hopewell, Va., plant;
- (2) Nylon Net Co. has not secured an alternative source of nylon fiber for use in production of salmon gill netting;
- (3) Changes have taken place with respect to the types of salmon gill netting being sold in the United States.

The investigation will be conducted in accordance with section 207.45(b) of the Commission's Rules of Practice and Procedure (46 F.R. 18023) (Mar. 23, 1981). The purpose of this investigation is to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded if the present antidumping order were to be modified or revoked to exclude salmon gill fish netting of manmade fibers. Modification or revocation of the dumping finding as to salmon gill fish netting would not affect the Commission's affirmative determination as to other forms of fish netting of manmade fibers from Japan.

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's Rules Practice and Procedure (19 CFR § 201.11, as amended by 47 F.R. 6189, Feb. 10, 1982), not later than 21 days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry.

Upon the expiration of the period for filing entries of appearance, the Secretary shall prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation, pursuant to section 201.11(d) of the Commission's rules (19 CFR § 201.11(d), as amended by 47 F.R. 6189, Feb. 10, 1982). Each document filed by a party to this investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without the certificate of service (19 CFR § 201.16(c), as amended by 47 F.R. 33682, Aug. 4, 1982).

Staff report.—A public version of the staff report containing preliminary findings of fact in this investigation will be placed in the public record on April 6, 1983, pursuant to section 207.21 of the Commission's rules (19 CFR § 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on April 27, 1983, at the U.S. International Trade Commission Building, 701 E. Street, NW., Washington, D.C. 20436. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on April 1, 1983. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on April 6, 1983, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is April 20, 1983.

Testimony at the public hearing is governed by section 207.23 of the Commission's rules (19 CFR § 207.23, as amended by 47 F.R. 33682, Aug. 4, 1982). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with section 207.22 (19 CFR § 207.22, as amended by 47 F.R. 33682, Aug. 4, 1982). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR § 207.24, as amended by 47 F.R. 6191, Feb. 10, 1982) and must be submitted not later than the close of business on May 4, 1983.

Written submissions.—As mentioned, parties to this investigation may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before May 4, 1983. A signed original and fourteen (14) true copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the Commission's rules (19 CFR § 201.8, as amended by 47 F.R. 6188, Feb. 10, 1982, and 47 F.R. 13791, Apr. 1, 1982). All written submissions, except for confidential business data, will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207, as amended by 47 F.R. 6190, Feb. 10, 1982, and 47 F.R. 33682, Aug. 4, 1982), and part 201, subparts A through E (19 CFR part 201, as amended by 47 F.R. 6188, Feb. 10, 1982; 47 F.R. 13791, Apr. 1, 1982; and 47 F.R. 33682, Aug. 4, 1982).

This notice is published pursuant to section 207.20 of the Commission's rules (19 CFR 207.20, as amended by 47 F.R. 6190, Feb. 10, 1982).

Record.—The record of investigation No. 751-TA-5, Salmon gill fish netting of manmade fibers from Japan, will be incorporated into the record of investigation No. 751-TA-7.

By order of the Commission.

Issued: January 28, 1983.

KENNETH R. MASON,
Secretary.

In the matter of
CERTAIN MARINE HARDWARE AND ACCESSORIES } Investigation No. 337-TA-136

Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. § 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 30, 1982, under section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337), on behalf of Attwood Corporation, 1016 N. Monroe, Lowell, Michigan 49331. A supplement to the complaint was filed on January 25, 1983. The complaint as supplemented (hereinafter the complaint) alleges unfair methods of competition and unfair acts in the importation of certain marine hardware and accessories into the United States, or in their sale, by reason of alleged (1) direct infringement

of claims 1, 2, 3, 5, 13, and 14 of U.S. Letters Patent 3,833,800; (2) infringement of the claim of U.S. Patent Des. 221,105; and violation of section 43(a) of the Lanham Act because of (3) infringement of Attwood's common law trademarks; (4) intentional passing off; and/or (5) false advertising and representation. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation and, after an expedited temporary relief hearing on the non-patent allegations, issue both a temporary exclusion order, prohibiting importation of said articles into the United States except under bond, and a temporary cease and desist order. After a full investigation, complainant requests that the Commission issue both a permanent exclusion order and a permanent cease and desist order.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in section 210.12 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.12).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission (Commissioner Stern dissenting), on January 27, 1983, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain marine hardware and accessories into the United States, or in their sale, by reason of alleged (1) direct infringement of claims 1, 2, 3, 5, 13, and 14 of U.S. Letters Patent 3,833,800; (2) infringement of the claim of U.S. Patent Des. 221,105; and violation of section 43(a) of the Lanham Act because of (3) infringement of certain of Attwood's common law trademarks; (4) intentional passing off; and/or (5) false advertising and representation, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) An investigation be made as to whether there is reason to believe that there is a violation of subsection (a) of Section 337 with regard to the non-patent allegations of (1) above;

(3) For purposes of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Attwood Corporation, 1016 N. Monroe, Lowell, Michigan 49331.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

L. S. Brown Co., 228 Margaret St., S.E., Atlanta, Georgia 30315.

Neil Trading Co., Ltd., 6 Alley 3, Lane 19, Tai Ping Rd., Tai Chung, Taiwan.

Taiwan Magnetics Co., Ltd., 3d Floor, Sec. No. 3 Palace Bldg., 346 Nanking East Rd., Taipei, Taiwan.

(c) Oreste Russ Pirfo, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Room 122, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation; and

(4) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer. Pursuant to Section 210.30(c) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.30(c)), discovery should be allowed in connection with the temporary relief phase of the investigation only to the extent necessary to weigh the standards that are applicable in determining whether temporary relief should be granted.

Responses must be submitted by the named respondents in accordance with section 210.21 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.21). Pursuant to sections 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202-523-0471.

FOR FURTHER INFORMATION CONTACT: Oreste Russ Pirfo, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202-523-4693.

By order of the Commission.

Issued: February 2, 1983.

KENNETH R. MASON,
Secretary.

*Investigation No. 731-TA-123 (Preliminary)***CERTAIN FLAT-ROLLED CARBON STEEL PRODUCTS FROM BRAZIL**

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

EFFECTIVE DATE: January 31, 1983.

SUMMARY: The United States International Trade Commission hereby gives notice of the institution of a preliminary antidumping investigation under section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of hot-rolled carbon steel products, whether known as sheets or plates, 0.1875 inch or more in thickness and over 8 inches in width, provided for in items 607.6610, 607.6615, 607.9400, 608.0710, and 608.1100 of the Tariff Schedules of the United States Annotated, which are alleged to be sold in the United States at less than fair value.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Zeck, Office of Investigations, U.S. International Trade Commission, 701 E St. NW., Washington, D.C. 20436, telephone 202-523-0339.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on January 31, 1983, on behalf of Bethlehem Steel Corp., Bethlehem, Pa., a domestic producer of the subject merchandise. The Commission must make its determination in the investigation within 45 days after the date of the filing of the petition, or by March 17, 1983 (19 CFR § 207.17).

Participation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided for in section 201.11 of the Commission's Rules of Practice and Procedure (19 CFR § 201.11, as amended by 47 F.R. 6189, Feb. 10, 1982), not later than seven (7) days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the notice.

Service of documents.—The Secretary will compile a service list from the entries of appearance filed in the investigation. Any party submitting a document in connection with the investigation shall, in addition to complying with section 201.8 of the Commission's rules (19 CFR § 201.8, as amended by 47 F.R. 6188, Feb. 10, 1982, and 47 F.R. 13791, Apr. 1, 1982), serve a copy of each such docu-

ment on all other parties to the investigation. Such service shall conform with the requirements set forth in section 201.16(b) of the rules (19 CFR § 201.16(b), as amended by 47 F.R. 33682, Aug. 4, 1982).

In addition to the foregoing, each document filed with the Commission in the course of this investigation must include a certificate of service setting forth the manner and date of such service. This certificate will be deemed proof of service of the document. Documents not accompanied by a certificate of service will not be accepted by the Secretary.

Written submissions.—Any person may submit to the Commission on or before February 23, 1983, a written statement of information pertinent to the subject matter of this investigation (19 CFR § 207.15, as amended by 47 F.R. 6190, Feb. 10, 1982). A signed original and fourteen (14) copies of such statements must be submitted (19 CFR § 201.8, as amended by 47 F.R. 6188, Feb. 10, 1982, and 47 F.R. 13791, Apr. 1, 1982).

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of section 201.6 of the Commission's rules (19 CFR § 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m., on February 17, 1983, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. Parties wishing to participate in the conference should contract the staff investigator, Ms. Judith Zeck (202-523-0339), not later than February 14, 1983, to arrange for their appearance. Parties in support of the imposition of antidumping duties in the investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Public inspection.—A copy of the petition and all written submissions, except for confidential business data, will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207, as amended by 47 F.R. 6182, Feb. 10, 1982, and 47 F.R. 33682, Aug. 4, 1982), and part 201, subparts A through E (19 CFR part 201, as amended by 47 F.R. 6182, Feb. 10, 1982, 47 F.R. 13791, Apr. 1, 1982, and 47 F.R. 33682, Aug. 4, 1982). Further infor-

mation concerning the conduct of the conference will be provided by Ms. Zeck.

This notice is published pursuant to section 207.12 of the Commission's rules (19 CFR § 207.12).

Issued: February 3, 1983.

KENNETH R. MASON,
Secretary.

Investigation No. 701-TA-182 (Final)

RAIL PASSENGER CARS AND PARTS THEREOF FROM CANADA

AGENCY: United States International Trade Commission.

ACTION: Change of time of public hearing.

SUMMARY: Notice is hereby given that the public hearing to be held in connection with United States International Trade Commission investigation No. 701-TA-182 (Final), Rail Passenger Cars and Parts Thereof from Canada, will begin at 12:00 noon, Tuesday, February 15, 1983, in the Commission's hearing room, U.S. International Trade Commission Building, 701 E Street, NW, Washington, D.C. A hearing time of 10:00 a.m. had previously been announced in the Commission's notice of institution of investigation as published in the Federal Register of December 15, 1982 (47 F.R. 56216).

By order of the Commission.

Issued: February 3, 1983.

KENNETH R. MASON,
Secretary.

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